

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:)	Mail Stop Issue Fee
)	
Gregory SIDEBOTTOM et al.)	Group Art Unit: 2419
)	
Application No.: 10/751,539)	Examiner: A. Sol
)	
Filed: January 6, 2004)	
)	
For: SYSTEMS AND METHODS FOR)	
EXPOSING FUNCTIONALITY)	
WITH STRICT ACCESS)	
CONTROLS)	

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTEMENT

U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Issue Fee
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants request adjustment of the patent term adjustment (PTA) calculated by the Office.
The Office calculated the PTA as follows:

USPTO Delay (days): 884

Three Years: --

Applicant Delay: 2

Total Patent Term Adjustment (days): 882

Applicants respectfully submit that method used to calculate the PTA above has been ruled to be in violation of 35 U.S.C. § 154, by the United States District Court for the District of Columbia. See Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008). The Wyeth court ordered the

Office to add the “USPTO Delay” under 35 U.S.C. § 154(b)(1)(A) to the “Three Years” under 35 U.S.C. § 154(b)(1)(B) and then subtract the Applicant Delay to determine the total PTA.

The correct calculation of the PTA is as follows:

USPTO A Delay (days): 884

Three Years B Delay: 791 days (to Notice of Allowance date) plus the days until the patent will issue (Total amount of 1004 days minus 213 overlapping A delay between 01/06/2007 and 08/07/2007)

Applicant Delay: 2

Total Patent Term Adjustment (days): 1673 plus the days until the patent issues

In this case, the Office has not credited the Applicants with any Three Years PTA under 35 U.S.C. § 154(b)(1)(B), which is an erroneous calculation under the Wyeth holding that the Office is bound to obey.

Therefore, Applicants respectfully request that the patent term be adjusted by a number of additional days to account for the Three Years delay under 35 U.S.C. § 154(b)(1)(B). The total number of additional days for the Three Years delay should be the number of days from the date of filing to the date of issuance minus three years. The total PTA should be the USPTO Delay of 884 days plus the Three Years Delay minus the Applicant Delay and Overlapping Time (overlapping time of USPTO Delay and Three Years Delay).

The Applicants do not dispute the Office’s calculation of the Applicant Delay to be 2 days. The above-referenced application is not subject to a Terminal Disclaimer.

Enclosed is the fee of \$200 pursuant to 37 CFR 1.18(e). Please charge any deficiencies or apply any credits to Deposit Account No. 50-1070.

Respectfully submitted,

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